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United States Department of State

Washington, D.C. 20520

JUN 16 2010

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MR. PHILIP MCNAMARA
Executive Secretary
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MS. TENE A. DOLPHIN
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Department of Commerce

MS. ERICA DE VOS
Director
Office of the Executive
Secretariat
Department of Energy

SUBJECT: Application from TransCanada Keystone Pipeline, L.P. for a Presidential permit to construct, connect, operate, and maintain the Keystone XL Pipeline Project at the U.S.-Canadian border at Phillips County, Montana, for the purpose of transporting Canadian crude oil production from the Western Canadian Sedimentary Basin ("WCSB") to existing terminals in the Texas Gulf Coast area.

The Department of State has received an application from TransCanada Keystone Pipeline, L.P. ("Keystone"), for a Presidential permit, pursuant to Executive Order 13337 of April 30, 2004, to construct, connect, operate, and maintain the Keystone XL Pipeline Project at the U.S.-Canadian border at Phillips

UNITED STATES DEPARTMENT OF STATE
REVIEW AUTHORITY: ADOLPH H EISNER
DATE/CASE ID: 28 FEB 2012 201100399

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County, Montana, for the purpose of transporting Canadian crude oil production from the Western Canadian Sedimentary Basin ("WCSB") to existing terminals in the Texas Gulf Coast area.

Keystone is a limited liability company, organized under the laws of the State of Delaware, and wholly owned by TransCanada Corporation, a Canadian public company organized under the laws of Canada. Keystone's primary business address is 450 1st Street, SW, Calgary, Alberta, Canada T2P 5H1. Although Keystone is seeking a permit for solely that portion of the pipeline crossing the international border (up to the first pipeline isolation valve to be located in the United States, approximately 1.2 miles from the United States-Canada border), the length of the proposed new pipeline would consist in the United States of 1,375 miles of 36-inch diameter pipeline installed in three segments: the 850 mile-long "Steele City" segment from the U.S. border to Steele City, Nebraska; the 478 mile-long "Gulf Coast" segment from Cushing, Oklahoma, to Nederland, Texas; and the 47 mile-long "Houston Lateral" segment from Liberty County, Texas to the Moore Junction area in Harris County, Texas. In Canada, 327 miles of 36-inch diameter pipeline will be constructed from Hardisty, Alberta, to Monchy, Saskatchewan, where it will cross the U.S.-Canadian border into Phillips County, Montana. An electronic copy of the Keystone XL application can be found at www.keystonepipeline-xl.state.gov.

Executive Order 13337 of April 30, 2004, delegates to the Secretary of State the President's authority to receive applications for permits for the construction, connection, operation, or maintenance of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country and to issue or deny such Presidential permits upon a national interest determination by the Secretary of State. The Executive Order directs the Secretary of State to refer the application and pertinent information to the heads of certain agencies to request their views before issuing a permit and authorizes the Secretary to consult with other interested federal and state officials, as appropriate. (The functions assigned to the Secretary have been further delegated within the Department of State.)

The Department of State published in the Federal Register a Notification of Receipt of the Keystone XL Application for a permit on November 4, 2008 (73 Fed. Reg. 65713). That notification solicited public comment on the application for a 30-day period. Thereafter, the Department published in the Federal Register a Notification of Intent to Prepare an Environmental Impact Statement, to conduct scoping meetings and to initiate consultations on January 28, 2009 (74 Fed. Reg.

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5019). On April 16, 2010, the Department, by letter, solicited the views of your agency on the Draft Environmental Impact Statement (DEIS) which has been prepared on the Keystone XL application. On April 20, 2010, the Department's Notice of Availability of the DEIS and request for public comment was published in the Federal Register on April 20, 2010 (75 FR 20653), seeking comments by May 21, 2010. On April 30, 2010, in response to requests from several organizations, the Department of State extended the public comment period until Wednesday, June 16, 2010 (75 F.R. 22890). The Department published in the Federal Register on June 15, 2010, its intention to extend the public comment period for a second time until Friday, July 2, 2010. We are now formally referring the Keystone XL permit application and a DEIS to your agency for interagency review.

The DEIS for the pipeline project was prepared by Entrix, Inc., a contractor selected by the Department of State. Electronic copies of the complete application, the DEIS, and all Federal Register Notices associated with the application can be downloaded at www.keystonepipeline-xl.state.gov. The Department of State has furnished guidance to Entrix and has participated in preparation of the DEIS. The Department of State will independently evaluate the DEIS. We would appreciate any specific comments you may have with regard to the DEIS or any other environmental issues of concern as they affect your agency's responsibilities under the National Environmental Policy Act (NEPA), by July 2, 2010.

The Department is also seeking all interagency comments on the Keystone XL application by September 15, 2010, under Executive Order 13337, including your agency's views on whether issuance of the permit is in the national interest and whether your agency objects to permit issuance. We must receive agency comments by September 15, 2010, so that the Department can reach a timely decision on permit issuance. Should an agency object to issuing a permit for the Keystone XL project, the agency must notify the State Department no later than September 15, 2010.

The Department of State will consider all relevant information, including the Keystone XL application, the FEIS, and all comments received in connection with the application and the preparation of the FEIS, in determining whether the issuance of a permit would be in the national interest. Consistent with E.O. 13337, relevant agencies will be separately notified of the Department's national interest determination and provided with an additional fifteen (15) days to object to the determination. If a determination is made that issuance of a permit is in the national interest, the Department will also transmit a draft permit for your

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consideration. Any agency required to be consulted under E.O. 13337 may notify the Secretary of State within those 15 days that it disagrees with the Department's determination and request that the matter be referred to the President for a final determination. Absent an objection, the Department will either issue or deny the permit after notification is provided to your agencies.

Please mail, fax, or email your comments on the DEIS only to Betsy Orlando, Keystone XL NEPA Project Manager, U.S. Department of State, OES/ENV, Room 2657, Washington, DC 20520. Fax to: (202) 647-5947, attention Betsy Orlando. Emails can be sent to: xlpipelineproject@state.gov. Such comments can also be submitted over the internet via the Keystone XL EIS website: www.keystonepipeline-xl.state.gov.

Please mail, fax, or email your concurrence or objection to permit issuance, along with any additional comments on the application or permit to Mr. Matthew T. McManus, Office of International Energy and Commodity Policy, Room 4843, Department of State, Washington, DC 20520, telephone (202) 647-3423, facsimile (202) 647-4037, email McManusMT@state.gov.

Please note that Department of State mail can be delayed due to security screening. Should you need any further information, please contact Mr. McManus at (202) 647-3423 or email McManusMT@state.gov.

Finally, we plan to host a meeting at the State Department in the near future to discuss our methodology in processing the Keystone XL permit application. If your agency would like to attend, please forward email contact information to Mr. McManus at McManusMT@state.gov.


Daniel B. Smith
Executive Secretary

Attachment:

E.O. 13337

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Approved:	EEB: ABorg, Acting	ok
Drafted:	EEB/ESC:	J. Brian Duggan
Cleared:	EEB/ESC:	DAS Douglas C. Hengel - ok
	EEB/ESC:	Matt McManus - ok
	E:	Paul Brown - ok
	OES/ENV:	Betsy Orlando - ok
	L/EB:	John Schmitker - ok
	L/OES:	Keith Benes - ok
	WHA/CAN:	Dave Rovinsky - ok
	G:	John Wecker - ok
	D(S):	Lourdes Cue - ok
	D(L):	Jen Butte-Dahl - ok
	S/SRGIA:	Recardo Gibson - ok
	S/P:	Peter Harrell - ok
	P:	Tamir Wasser - ok

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Presidential Documents

Executive Order 13337 of April 30, 2004**Issuance of Permits With Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States**

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to amend Executive Order 11423 of August 16, 1968, as amended, and to further the policy of my Administration as stated in Executive Order 13212 of May 18, 2001, as amended, to expedite reviews of permits as necessary to accelerate the completion of energy production and transmission projects, and to provide a systematic method for evaluating and permitting the construction and maintenance of certain border crossings for land transportation, including motor and rail vehicles, that do not require construction or maintenance of facilities connecting the United States with a foreign country, while maintaining safety, public health, and environmental protections, it is hereby ordered as follows:

Section 1. (a) Except with respect to facilities covered by Executive Order 10485 of September 3, 1953, and Executive Order 10530 of May 10, 1954, the Secretary of State is hereby designated and empowered to receive all applications for Presidential permits, as referred to in Executive Order 11423, as amended, for the construction, connection, operation, or maintenance, at the borders of the United States, of facilities for the exportation or importation of petroleum, petroleum products, coal, or other fuels to or from a foreign country.

(b) Upon receipt of a completed application pursuant to paragraph (a) of this section, the Secretary of State shall:

- (i) Request additional information needed from the applicant, as appropriate, before referring the application to other agencies pursuant to paragraph (b)(ii) of this section;
- (ii) Refer the application and pertinent information to, and request the views of, the Secretary of Defense, the Attorney General, the Secretary of the Interior, the Secretary of Commerce, the Secretary of Transportation, the Secretary of Energy, the Secretary of Homeland Security, the Administrator of the Environmental Protection Agency, or the heads of the departments or agencies in which the relevant authorities or responsibilities of the foregoing are subsequently conferred or transferred, and, for applications concerning the border with Mexico, the United States Commissioner of the International Boundary and Water Commission; and
- (iii) Refer the application and pertinent information to, and request the views of, such other Federal Government department and agency heads as the Secretary of State deems appropriate.

(c) All Federal Government officials consulted by the Secretary of State pursuant to paragraph (b)(ii) or (b)(iii) of this section shall provide their views and render such assistance as may be requested, consistent with their authority, in a timely manner, but not to exceed 90 days from the date of the request.

(d) Should any of the Federal Government officials consulted pursuant to paragraph (b)(ii) or (b)(iii) of this section request from the Department of State additional information that is necessary for them to provide their views or to render such assistance as may be required, the time elapsed

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between the date of that request for additional information and the date such additional information is received shall not be counted in calculating the time period prescribed in paragraph (c) of this section.

(e) The Secretary of State may also consult with such State, tribal, and local government officials and foreign governments, as the Secretary deems appropriate, with respect to each application. The Secretary shall solicit responses in a timely manner, not to exceed 90 days from the date of the request.

(f) Upon receiving the views and assistance requested pursuant to paragraphs (b) and (e) of this section, the Secretary of State shall consider, in light of any statutory or other requirements or other considerations, whether or not additional information is needed in order to evaluate the application and, as appropriate, request such information from the applicant.

(g) After consideration of the views and assistance obtained pursuant to paragraphs (b) and, as appropriate, (e) and (f) of this section and any public comments submitted pursuant to section 3(a) of this order, if the Secretary of State finds that issuance of a permit to the applicant would serve the national interest, the Secretary shall prepare a permit, in such form and with such terms and conditions as the national interest may in the Secretary's judgment require, and shall notify the officials required to be consulted under paragraph (b)(ii) of this section of the proposed determination that a permit be issued.

(h) After consideration of the views obtained pursuant to paragraphs (b) and, as appropriate, (e) and (f) of this section and any public comments provided pursuant to section 3(a) of this order, if the Secretary of State finds that issuance of a permit to the applicant would not serve the national interest, the Secretary shall notify the officials required to be consulted under paragraph (b)(ii) of this section of the proposed determination that the application be denied.

(i) The Secretary of State shall issue or deny the permit in accordance with the proposed determination unless, within 15 days after notification pursuant to paragraphs (g) or (h) of this section, an official required to be consulted under paragraph (b)(ii) of this section shall notify the Secretary of State that he or she disagrees with the Secretary's proposed determination and requests the Secretary to refer the application to the President. In the event of such a request, the Secretary of State shall consult with any such requesting official and, if necessary, shall refer the application, together with statements of the views of any official involved, to the President for consideration and a final decision.

Sec. 2. (a) Section 1(a) of Executive Order 11423, as amended, is amended to read as follows: "Except with respect to facilities covered by Executive Order Nos. 10485 and 10530, and by section 1(a) of the Executive Order of April 30, 2004, entitled 'Issuance of Permits with Respect to Certain Energy-Related Facilities and Land Transportation Crossings on the International Boundaries of the United States' (the order of April 30, 2004), the Secretary of State is hereby designated and empowered to receive all applications for Presidential permits for the construction, connection, operation, or maintenance, at the borders of the United States, of:

- (i) pipelines, conveyor belts, and similar facilities for the exportation or importation of all products, except those specified in section 1(a) of the order of April 30, 2004, to or from a foreign country;
- (ii) facilities for the exportation or importation of water or sewage to or from a foreign country;
- (iii) facilities for the transportation of persons or things, or both, to or from a foreign country;
- (iv) bridges, to the extent that congressional authorization is not required;
- (v) similar facilities above or below ground; and

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(vi) border crossings for land transportation, including motor and rail vehicles, to or from a foreign country, whether or not in conjunction with the facilities identified in (iii) above.

(b) Section 1(b) of Executive Order 11423, as amended, is amended by deleting the text "(a)(iii), (iv), or (v)" and by inserting the text "(a)(iii), (iv), (v), or (vi)" in lieu thereof.

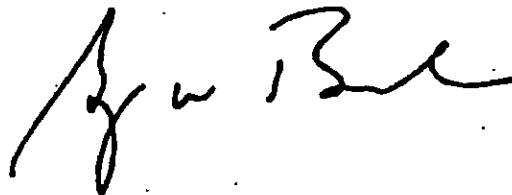
Sec. 3. (a) The Secretary of State may provide for the publication in the Federal Register of notice of receipt of applications, for the receipt of public comments on applications, and for notices related to the issuance or denial of applications.

(b) The Secretary of State is authorized to issue such further rules and regulations, and to prescribe such further procedures, including, but not limited to, those relating to the International Boundary and Water Commission, as may from time to time be deemed necessary or desirable for the exercise of the authority conferred by this order.

Sec. 4. All permits heretofore issued with respect to facilities described in section 2(a) of this order pursuant to Executive Order 11423, as amended, and in force at the time of issuance of this order, and all permits issued hereunder, shall remain in effect in accordance with their terms unless and until modified, amended, suspended, or revoked by the appropriate authority.

Sec. 5. Nothing contained in this order shall be construed to affect the authority of any department or agency of the United States Government, or to supersede or replace the requirements established under any other provision of law, or to relieve a person from any requirement to obtain authorization from any other department or agency of the United States Government in compliance with applicable laws and regulations subject to the jurisdiction of that department or agency.

Sec. 6. This order is not intended to, and does not, create any right, benefit, or trust responsibility, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, instrumentalities, or entities, its officers or employees, or any other person.



THE WHITE HOUSE,
April 30, 2004.

[FR Doc. 04-10378
Filed 5-4-04; 8:45 am]
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Memorandum for Mr. Michael Bruhn: Application from TransCanada Keystone Pipeline, L.P. for a Presidential Permit to construct, connect, operate, and maintain the Keystone Pipeline at the US-Canadian border at Phillips County, Montana

DOD

Mr. Michael Bruhn

Clearance ☒Information ☐Per Request ☐Comment ☒

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SECDEF	DEPSECDEF	SPL/ASST	EXE/SEC	USDP
USDI	NSC COORD	CCD	CABLE CH	FILE

DANIEL B. SMITH

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Memorandum for Mr. Michael Bruhn: Application from TransCanada Keystone Pipeline, L.P. for a Presidential Permit to construct, connect, operate, and maintain the Keystone Pipeline at the Us-Canadian border at Phillips County, Montana

DOD

Mr. Michael Bruhn

Clearance ☒

Information ☐

Per Request ☐

Comment ☒

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